

SECTION 8: GRIEVANCE PROCEDURE¹**8-1. Purpose.**

The purpose of this grievance procedure is to afford each employee an immediate and fair method for the resolution of disputes which may arise between the employee and the County administration.

8-2. Adoption.

8-2.1. This grievance procedure and each amendment hereto, shall be certified in writing to be in compliance with state law, by: the county attorney and the county administrator.

8-2.2. The written compliance certification shall be filed with the Clerk of the Circuit Court.

8-3. Definition of grievance.

8-3.1. The term grievance, as used herein, shall refer to a complaint or dispute by an employee relating to his employment, including but not necessarily limited to:

- 8-3.1.1.** disciplinary actions, including dismissals, disciplinary demotions, and suspensions;
- 8-3.1.2.** the application of personnel policies, procedures, rules and regulations;
- 8-3.1.3.** discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and
- 8-3.1.4.** acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported and violation of such law to a governmental authority, has sought any change in law before the congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. There shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance is an act of retaliation.

8-3.2. Local governments always retain the exclusive right to manage the affairs and operations of government; therefore, the following complaints are nongrievable:

- 8-3.2.1.** the establishment, negotiation and revision of wages, salaries, position classifications or benefits;

¹ Va. Code 15.2-1506, -1507.

- 8-3.2.2.** work activity accepted by the employee as a condition of employment, or work activity which may reasonably be expected to be a part of the job content;
- 8-3.2.3.** the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
- 8-3.2.4.** failure to promote, except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
- 8-3.2.5.** the methods, means and personnel by which work activities are to be carried on;
- 8-3.2.6.** termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force or job abolition, except there such action has been taken with respect to an employee who has been reinstated within the previous six months as the result of the final determination of a grievance (however, the county's action shall be upheld upon a showing by the county that there was a valid business reason for the action and the employee was notified of the reason in writing prior to the effective date of the action);
- 8-3.2.7.** hiring, promotion, transfer, assignment and retention of employees;
- 8-3.2.8.** relief of employees from their duties in emergencies.

8-4. Determination of qualifying grievances.

- 8-4.1.** Decisions regarding grievability and access to the grievance procedure shall be made by the county attorney, or her designee, at any time prior to the panel hearing. Neither the county attorney nor the Commonwealth's attorney may decide the question of grievability.
- 8-4.2.** Issues of grievability or access to the grievance procedure may be raised by the county administrator herself, or by request of a department head or the grievant. If such issue is raised by request of a department head or the grievant, then the county administrator shall make her determination within 10 calendar days of receiving the request.
- 8-4.3.** A copy of the county administrator's ruling shall be sent or delivered to the grievant.
- 8-4.4.** The county administrator's ruling may be appealed by a grievant to the Circuit Court, for a hearing on the issue of whether the complaint is grievable and/or whether the grievant is a person covered by this

grievance procedure. Proceedings for review of the county administrator's decision shall be instituted by the grievant, by filing a notice of appeal with the county administrator within 10 calendar days from the date of receipt of the decision any giving a copy to all other parties.

- 8-4.5.** Within 10 calendar days after receiving the notice of appeal, the county administrator shall transmit to the Clerk of the Circuit Court a copy of the decision, a copy of the notice of appeal, and relevant evidentiary exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the county administrator to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.
- 8-4.6.** Within 30 days of receipt of such records by the Clerk of the Circuit Court, the court, sitting without a jury, shall hear the appeal on the record transmitted by the county administrator and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. In its discretion, the court may receive such other evidence as the ends of justice require.
- 8-4.7.** The court may affirm the decision of the county administrator or her designee, or the court may reverse or modify the decision. The decision of the court must be rendered within 15 days after conclusion of the hearing. The decision of the court is final, and is not appealable.
- 8-5. Coverage of personnel.**
- 8-5.1.** The county administrator, or her designee, shall determine the officers and employees excluded from this grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.
- 8-5.2.** All non-probationary permanent full-time and part-time employees of the County are eligible to file grievances, with the following exceptions:
- 8-5.2.1.** Appointees of elected groups or individuals;
 - 8-5.2.2.** Officials and employees who by law serve at the will or pleasure of an appointing authority;
 - 8-5.2.3.** Deputies and executive assistants to the county administrator;
 - 8-5.2.4.** Department heads and agency heads;
 - 8-5.2.5.** Employees whose terms of employment are limited by law;
 - 8-5.2.6.** Temporary, limited term and seasonal employees;
 - 8-5.2.7.** Any other employee electing to proceed pursuant to some other procedure available by law to the employee for the resolution of his grievance.

8-6. Process.

8-6.1. Commencement.

To initiate a grievance, an employee must file a written complaint, which must include a detailed statement of the facts giving rise to the grievance. The written complaint shall be prepared using a form provided by the county, and must be received by the county administrator no later than 20 calendar days after the event or circumstances giving rise to the grievance.

8-6.2. *Step One.*

8-6.2.1. The first step in the grievance process shall be an informal, face-to-face discussion of the grievance between the employee and the head of his department.

8-6.2.2. The only persons who may normally be present in this meeting are the employee, his department head, the employee's immediate supervisor (if different from his department head) and any witnesses desired by them. Witnesses may be present only while actually providing information and testimony.

8-6.2.3. If the employee's grievance cannot be resolved to the satisfaction of both the employee and his department head at Step 1, then the employee shall, within 7 calendar days after the meeting, submit to the county administrator a written request to proceed to Step 2.

8-6.3. *Step Two.*

8-6.3.1. The second step in the grievance process shall be a formal review of the employee's grievance by the county administrator. A face-to-face hearing shall be scheduled to take place within 14 calendar days of the county administrator's receipt of the employee's written request for a Step 2 review.

8-6.3.2. The persons who may be present in this meeting are the employee, his department head, and appropriate witnesses. The grievant may also be accompanied by a representative of his choice. If the grievant is represented by legal counsel, the county may also be represented by counsel. The grievant shall be required to notify the county administrator at least 48 hours in advance of the scheduled meeting if he intends to have a representative present, the name of the representative, and a statement of whether the representative is an attorney. If such notice has not been given, the county administrator may continue the meeting to a later date, if necessary, so that legal counsel for the County may attend.

8-6.3.3. During the review hearing the county administrator shall consider information provided by the employee and the employee's department head, and witnesses, if any, for each side. Additionally, prior to making any final decision, the county administrator shall review the employee's annual performance evaluations, records of

any prior disciplinary actions, any relevant county or departmental policies, and other information the county administrator deems relevant.

8-6.3.4. Within 7 calendar days after the review hearing, the county administrator shall render a final decision on the grievance. The decision shall be set forth in writing and shall identify with reasonable specificity the facts on which the decision is based. The decision shall be mailed to the grievant at the most recent address of record with the Department of Finance.

8-6.3.5. If the employee is not satisfied with the county administrator's final decision, then the employee may, within 7 calendar days after receiving the decision, submit to the county administrator a written request to proceed to a hearing before a grievance panel.

8-7. Panel hearings.

8-7.1. Qualifying grievances shall advance to a hearing before an impartial panel. A panel hearing is the final step in the grievance process.

8-7.2. The grievance panel shall consist of three members: one member selected by the grievant, one member selected by the employee's department head, and a third member selected by the first two. The third member shall serve as the chairperson of the panel.

8-7.2.1. The County and the grievant shall each select their chosen panel member, and shall provide the county administrator with the panel member's name and contact information within 14 days after the grievant's request for a panel hearing. At the grievant's option, his panel selection may be identified as part of his written request for a panel hearing.

8-7.2.2. Except in cases where the County elects to utilize an administrative hearing officer, the two panel members selected by the parties shall promptly choose the third panel member, no later than 21 days after the grievant's request for a panel hearing. In the event that agreement cannot be reached as to the final panel member, the chief judge of the Circuit Court for Madison County shall select the third panel member.

8-7.2.3. No member of the panel shall have any direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. No attorney having direct involvement with the subject matter of the grievance may serve as a panel member, nor may any such attorney's partners, associates, employees or co-employees. Further, the following persons are

prohibited from serving as panel members: managers who are in a direct line of supervision of the grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process: spouse, parent, child, descendants of a child, sibling, niece, nephew, first cousin.

8-7.3. The County is not required to have an administrative hearing officer in any case, but at its sole option the County may elect to utilize a hearing officer in employee termination or retaliation cases.

8-7.3.1. If the County elects to use an administrative hearing officer, that person shall serve as the third panel member. The County shall bear the expense of the hearing officer's services.

8-7.3.2. An administrative hearing officer must be appointed by the Executive Secretary of the Virginia Supreme Court.

8-7.3.3. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary, selected from an appropriate geographical region on a rotating basis.

8-7.4. Both the grievant and the County may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such legal counsel or representative may examine, cross-examine, question and present evidence on behalf of the grievant or county before the panel.

8-7.5. The following rules shall govern the conduct of each panel hearing:

8-7.5.1. The panel shall confer among themselves and shall establish a hearing date, which shall not be more than 30 days after the selection of the third panel member.

8-7.5.2. County shall provide the panel with copies of the grievance record prior to a hearing and shall provide the grievant with a list of the documents furnished to the panel, at least 10 days prior to the scheduled hearing. At least 10 days prior to a scheduled hearing, the grievant and his attorney shall, upon request, be allowed access to and copies of relevant files intended to be used in the grievance hearing. At the same time, the County shall provide a list of witnesses to be called on its behalf at the hearing.

8-7.5.3. At least 10 days prior to a scheduled hearing, the grievant or his attorney shall provide the County with a list of documents, exhibits and a list of witnesses intended to be used in the grievance hearing. Upon request, the grievant shall promptly, in

advance of the hearing, provide the County with copies of the listed documents and exhibits.

- 8-7.5.4.** It shall be the responsibility of the panel to determine the propriety of attendance at the hearing of persons not having a direct interest in the outcome of the hearing. At the request of either party, the hearing shall be conducted in private.
- 8-7.5.5.** It shall also be the responsibility of the panel to determine the order of presentation of evidence and the relevance and admissibility of evidence without regard to the burden of proof. A full and equal opportunity shall be afforded to the grievant and to the County for presentation of their evidence.
- 8-7.5.6.** All evidence must be presented in the presence of the panel and the parties to the grievance, except as otherwise agreed by mutual consent of the parties.
- 8-7.6.** Upon conclusion of the hearing, the grievance panel shall meet privately and shall make a final decision on the grievance. The majority decision of the panel shall serve as its ruling. The final decision of the panel, acting within the scope of its authority, shall consistent with existing written policies and procedures of the County and with provisions of state and federal law.

 - 8-7.6.1.** The question of whether the relief granted by a panel is consistent with written County policies shall be determined by the county administrator, or her designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney.
 - 8-7.6.2.** The grievance panel shall have no authority to formulate policies or procedures, or to alter existing policies or procedures.
- 8-7.7.** The panel's decision shall be set forth in writing, and a copy shall be mailed or delivered to the grievant and to the county administrator within 7 calendar days after the conclusion of the grievance hearing. The panel's written decision shall be final and binding upon the parties.

 - 8-7.7.1.** Notwithstanding contrary provisions of this section, a final panel decision rendered under the provisions of this section which would result in the reinstatement of any employee of a sheriff's office who has been terminated for cause may be reviewed by the Circuit Court upon the petition of the County. The Circuit Court's

review shall be limited to the question of whether the panel's decision was consistent with provisions of law and written policy.

8-8. Implementation of panel decisions. Either the employee or the County may petition the Circuit Court for an order requiring implementation of the panel's decision.

8-9. Effect of time periods.

8-9.1. It is intended that speedy attention to employee grievances will be promoted by County officials, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

8-9.2. Time periods may be extended by mutual agreement of the County and the grievant.

8-9.3. After initial filing of a grievance, the failure of either party to comply with all substantial procedural requirements of this grievance procedure, including the panel hearing, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided that the party not in compliance fails to correct the noncompliance within 5 workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the county administrator.

8-9.4. The county administrator, or her designee, may require a clear written explanation of the basis for just cause extensions or exceptions. The county administrator shall determine compliance issues.

8-9.5. A compliance decision made by the county administrator shall be subject to judicial review by filing a petition with the Circuit Court within 30 days of the decision.